IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.519 OF 2005

IN

SUMMARY SUIT NO. 3048 OF 2002

Inder Kumar Gupta .....**Plffs.**
vs.
M/s. Ashish Metal Rolling
Mills and Ors. .....**Defnds.**

SUMMONS FOR JUDGMENT NO.520 OF 2005
IN
SUMMARY SUIT NO. 2974 OF 2002

Lachmidhar Kanshiram .....**Plffs.**
vs.
M/s. Ashish Agencies and Ors.

Rajesh Maravoor for the plaintiffs.
Mukesh Pandit i/b. Anup Khaitan and Co.
for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 31st January,2006.

P.C. :.

1. The present suit is filed for the recovery of sum of Rs.14,19506/- and Rs.12,31,605/-. The said amount is based on two dishonoured cheques amounting to Rs.10 lacs and Rs.8 lacs each. The suit is filed alongwith interest thereon. The learned counsel for the defendant has firstly contended firstly that the defendant company is declared as sick industries and he relies upon a circular issued by by the Industries Department, Gujarat State registering the defendant company as sick industries. He has drawn my attention to the registration certificate issued under Government Resolution No. BFR/(HPC)/102003/3537/P

2. It is nowhere stated in the said circular that the the resolution passed comes under what provisions of the Act nor the learned counsel is able to point out that by virtue of defendant company being declared as sick there is a bar under any statue for proceeding with the present suit. company as sick the proceedings cannot proceed. He thereafter states that it is issued under the Bombay Relief Undertaking Act as applicable to the

state of Gujarat. In so far as the said contention is concerned in view of the judgment of this court in the case of **R.S.D.V. Finance Ltd vs. Shree Vallabh Glass Works Ltd reported in (1993) 2 SCC 130** inter-alia holding that the provisions of Bombay Relief Undertaking Act has no extra territorial operation. The aforesaid contention of the defendant has to be rejected. On merits, he has relied upon the averments made in para-5 of the plaint which reads as under :

> 5. The Plaintiff on the expiry of the said period of 2 months requested the defendants to make payment of Rs.10,00,000/-. However the defendants informed that they were not in position to repay the said sum immediately and hence requested for some more time. The Defendants in the meantime requested the plaintiff to accept the interest @ 18% per annum and issued a Demand Draft for Rs.1,20,000/- on account towards the interest from 26/4/1999 to 27/12/1999.

3. On the basis of the aforesaid averments contained in the plaint it has been contended that the plaintiff ought not to have deposited the cheques in August, 1999 when infact interest is paid already upto December 1999. Thus there is a premature presentation of the cheques by the plaintiffs. However, learned counsel for the plaintiff has pointed out that inrespect of this amount of interest received the plaintiff has given necessary credit in the particulars of claim where Rs.1,20,000/- is given credit of as payment on 2.7.1999. It is contended the learned counsel for the defendant that the suit is premature as the cause of action did not arise in August 1999. The aforesaid contention has no merits because the suit is filed in 2002. By that time the said interest amount was duly payable and the receipt there of is adjusted. It is further admitted position that after December 1999 no interest is paid on the said loan amount.

5. The next contention advanced by the learned

counsel for the defendant that the cheques were signed in blank and handed over. In the light of the provisions of the Negotiable Instrument Act even if cheques were signed in blank and handed over the holder has right to fill up the said cheques and the defendant cannot make any grievance thereof. I find no merits in any of the aforesaid contention advanced by the defendant and therefore I reject the same. Inview thereof I pass the following order :

. In view of the fact that defendant no.2 and 4 are not partners of the said partnership firm, I direct Defendant no.1 and 3 to deposit in this court a sum of Rs.20 lacs covered inrespect of both the cheques within a period of four weeks from today. If the amount is not deposited the plaintiff will be entitled to the decree. If the amount is deposited the amount to be invested in fixed deposit for a period of one year in any nationalised bank and the same to be renewed

from time to time.

4. In so far as the Summons for Judgment No. 510 of 2005 is concerned, the facts and defence in the present case are identical to Summons for Judgment no. 519 of 2005. Therefore in the light of the reasons as given above keeping the facts and defence same, I pass the following order :

. In view of the fact that defendant no.2 and 4 are not partners of the said partnership firm, I direct Defendant no.1 and 3 to deposit in this court a sum of Rs.20 lacs covered inrespect of both the cheques within a period of four weeks from today. If the amount is not deposited the plaintiff will be entitled to the decree. If the amount is deposited the amount to be invested in fixed deposit for a period of one year in any

nationalised bank and the same to be renewed from time to time.

SD/-

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